

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

VB

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/361,619 07/27/99 LOOSMORE S 1038-921-MIS

HM12/0801

EXAMINER

SIM & MCBURNEY
330 UNIVERSITY AVENUE
6TH FLOOR
TORONTO ON MSG 1R7
CANADA

DEVI, S

ART UNIT	PAPER NUMBER
----------	--------------

1645

5

AIR MAIL

DATE MAILED:

08/01/00

Please find below and/or attached an Office communication concerning this application or proceeding.**Commissioner of Patents and Trademarks**

Office Action Summary	Application No. 09/361,619	Applicant(s) Loosemore et al.
	Examiner S. Devi, Ph.D.	Group Art Unit 1645

Responsive to communication(s) filed on 03/22/2000.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire one month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-23 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) _____ is/are rejected.

Claim(s) _____ is/are objected to.

Claims 1-23 are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

Notice to comply with Sequence Rules.

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/361,619	07/27/99	Loosemore et al.	1038-921-MIS

EXAMINER	
S. Devi, Ph.D.	
ART UNIT	PAPER NUMBER
1645	5

DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application
Commissioner of Patents

- 1) This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 C.F.R 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 C.F.R 1.821 through 1.825 for the reason(s) set forth on the attached Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures.

- 2) APPLICANT IS GIVEN A ONE MONTH EXTENDABLE PERIOD OF TIME FROM THE DATE OF THIS LETTER WITHIN WHICH TO COMPLY WITH THE SEQUENCE RULES, 37 C.F.R 1.821 - 1.825. Failure to comply with these requirements will result in ABANDONMENT of the application under 37 C.F.R 1.821(g). Extensions of time may be obtained under the provisions of 37 C.F.R 1.136. In no case may an Applicant extend the period of reply beyond the SIX MONTH statutory period. Applicant is requested to return a copy of the attached Notice to Comply with the response.

Election/Restriction

- 3) Claims 1-23 are under prosecution in the instant application.
- 4) **Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-305-3704. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Ph.D., Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.
- 5) Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-10, drawn to a nucleic acid molecule having a nucleotide sequence of *Moraxella catarrhalis*, a vector comprising the same and a host cell transformed with the vector, classified in class 536, subclass 23.1.
 - II. Claims 11-17, drawn to a recombinant outer membrane protein of *Moraxella catarrhalis*, classified in class 530, subclasses 350 and 825.
 - III. Claims 18 and 19, drawn to a method of inducing protection against disease caused by *Moraxella catarrhalis* by administering a composition comprising outer membrane protein of *Moraxella catarrhalis*, classified in class 424, subclass 251.1.
 - IV. Claims 20-23, drawn to a method for the production of an outer membrane protein of *Moraxella catarrhalis* by transforming a host with a vector comprising a nucleic acid molecule and growing the host cell, classified in class 435, subclass 71.1.
- 6) Inventions I, II, III and IV are distinct from one another. Inventions I and II are drawn to two independent products, a nucleic acid molecule, a vector and a host cell, and an outer membrane protein, respectively. The nucleic acid molecule, for example, of invention I and the outer membrane protein of invention II are distinct from one another structurally, functionally, immunologically and biologically.

The methods of inventions III and IV are independent and distinct from one another, because the two methods differ from one another in method steps, parameters and reagent(s) or

composition(s) used and the ultimate goals accomplished.

7) Inventions I and IV are related as product and process of using the product. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process of using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P 806.05(h)). In the instant case, the transformed host cell of invention I can be used in a materially different process, for example, as a source of immunogen in raising a specific antiserum reagent in animals, or as a source of coating antigen in a diagnostic assay.

8) Inventions II and III are related as product and process of using the product. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process of using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P 806.05(h)). In the instant case, the outer membrane protein of invention II can be used in a materially different process, for example, as a source of source of coating antigen in a diagnostic assay.

9) Inventions I and III and inventions II and IV are unrelated because the products of inventions I and II are not required to practice the methods of inventions III and IV respectively.

Because these inventions are distinct for the reasons given and have acquired a separate status in the art as shown by their different classification/subclassification and divergent subject matter, restriction for examination purposes as indicated is proper.

10) Applicants are advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 C.F.R 1.143).

11) Applicants are reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filled petition under C.F.R 1.48(b) and by the fee required under 37 C.F.R 1.17(h).

Serial Number 09/361,619
Art Unit: 1645

12) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (703) 308-9347. The Examiner can normally be reached on Monday to Friday from 7.45 a.m. to 4.15 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (703) 308-4027. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

SD
S. Devi
July 2000